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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/712,934

11/12/2003

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393032019711

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25224 7590 04/08/2008  
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EXAMINER

MILLIKIN, ANDREW R

ART UNIT

PAPER NUMBER

2837

MAIL DATE

DELIVERY MODE

04/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                       |                                      |  |
|------------------------------|---------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/712,934  | <b>Applicant(s)</b><br>SUZUKI ET AL. |  |
|                              | <b>Examiner</b><br>ANDREW R. MILLIKIN | <b>Art Unit</b><br>2837              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-7, 16, 22, 26, 27, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-7, 16, 22, 26, 27, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 4-7, 16, 22, 26, 27, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by a review of Sonic Foundry ACID published in Electronic Musician, hereafter referred to as “ACID” (see attached PTO-892) and by the sale and public use of the ACID program as described in the article.

3. Claims 4, 16, 22, & 30: ACID teaches a method for editing performance data using a computer system having a display (see pages 1-2), said method comprising the steps of: controlling the computer system to display a plurality of layers on a screen of the display (see the “MIX IT UP AND POOR” section; you can add envelopes to tracks to control volume, panning, and effects-send levels), wherein each of said plurality of layers (i.e., each envelope) is assigned to a different type of articulation to be added to a musical tone to be generated based on the performance data (both volume levels and effects-send levels can be used to control articulation); providing an instruction to change a display location of at least one of the layers (“you can adjust the envelope by dragging on it with the mouse”); controlling the computer system to change the display location of the at least one of the layers in response to the instruction; and attaching an

execution icon (an "envelope point") at a prescribed position onto one of said plurality of layers that is displayed on the screen of the display, wherein said attached icon represents execution-related data for adding, to the musical tone to be generated, a predetermined type of articulation to which said one of said plurality of layers is assigned (i.e., volume, effects-send levels, etc.), wherein said step of attaching the execution icon causes the corresponding execution-related data to be incorporated into the performance data being edited (from page 3, "ACID lets you build and edit your tune as you listen").

4. Claim 5: ACID teaches that the envelopes can be dragged on page 4. As a result, users would be capable of setting one envelope higher than another envelope, which would result in the layers being "vertically arranged on the screen." If the user then set the lower envelope to be higher than the higher envelope, the instruction would result in a change of the display location of the layer within the vertical arrangement of the layers.

5. Claim 6: ACID teaches that the instruction to change the display location of the layer is given by a command which is selected by a user of the computer system on the screen of the display (page 4; "you can...adjust the envelope by dragging on it with the mouse").

6. Claim 7: ACID teaches that the display location of the layer is changed by effecting drag-and-drop operations with a mouse on a prescribed portion of the layer (page 4; "you can...adjust the envelope by dragging on it with the mouse").

7. Claim 26: ACID teaches that one or plural execution icons are displayed in the layer in a direction from the left to the right on the display screen in accordance with progress of the performance data (see Fig. 3 & the "MIX IT UP AND POOR" section).
8. Claim 27: ACID teaches that each layer is displayed as an execution icon layer corresponding to the execution-related data (see Fig. 3 & the "MIX IT UP AND POOR" section), and that the execution icon layer contains at least one of an accent icon layer, a joint icon layer, an attack icon layer, and a release icon layer (in that there is a volume envelope), and a dynamics icon layer (in that there is an effects-send level envelope that can control any effect, many of which effect dynamics).
9. Claim 29: ACID teaches that when the execution icon attached to the layer is edited (i.e., dragged), edited content is reflected onto the performance data (from page 3, "ACID lets you build and edit your tune as you listen").

### ***Response to Arguments***

10. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW R. MILLIKIN whose telephone number is (571)270-1265. The examiner can normally be reached on M-R 7:30-5 and 7:30-4 Alternating Fridays (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARM  
/Lincoln Donovan/  
Supervisory Patent Examiner, Art Unit 2837